

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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**RAFAEL URENA,**

**Plaintiff,**

**-v-**

**9:08-CV-1309 (NAM/GHL)**

**BRIAN FISCHER, SGT. ARMSTRONG,**

**Defendants.**

\*\*\*\*\*  
APPEARANCES:

Rafael Urena  
Plaintiff *pro se*

Hon. Andrew M. Cuomo, Attorney General for the State of New York  
Charles J. Quackenbush, Esq., Assistant Attorney General  
The Capitol  
Albany, New York 12224  
Attorney for Defendants

**Hon. Norman A. Mordue, Chief U.S. District Judge:**

**MEMORANDUM-DECISION AND ORDER**

Plaintiff, formerly an inmate in the custody of the New York State Department of Correctional Services (“DOCS”), brought this *pro se* action under 42 U.S.C. § 1983, alleging that, while he was incarcerated, defendants failed to protect him from an assault by another inmate and denied him due process at the disciplinary hearing following the assault. Defendants move for summary judgment (Dkt. No. 34). Upon referral pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3(c), United States Magistrate Judge George H. Lowe issued a Report and Recommendation (Dkt. No. 40) recommending that the motion be granted and the action dismissed.

Plaintiff submits a general objection (Dkt. No. 42) to the Report and Recommendation. In

view of the general nature of the objection, the Court reviews for clear error or manifest injustice. *See Davis v. Chapple*, 2010 WL 145298, \*2 (N.D.N.Y. Jan. 8, 2010), *Brown v. Peters*, 1997 WL 599355, \*2-\*3 (N.D.N.Y.), *aff'd without op.*, 175 F.3d 1007 (2d Cir. 1999). Plaintiff also moves for appointment of counsel (Dkt. No. 43).

The Court has reviewed the Report and Recommendation and the entire record, including the additional papers plaintiffs submits with his motion for appointment of counsel. The Court finds no clear error or manifest injustice in the Report and Recommendation.<sup>1</sup> Moreover, the papers submitted with the motion for appointment of counsel do not warrant a different result.

It is therefore

ORDERED that the Report and Recommendation of United States Magistrate Judge George H. Lowe (Dkt. No. 40) is accepted; and it is further

ORDERED that defendants' motion for summary judgment (Dkt. No. 34) is granted; and it is further

ORDERED that the motion for appointment of counsel (Dkt. No. 43) is denied.

IT IS SO ORDERED.

May 27, 2010  
Syracuse, New York

  
Norman A. Mordue  
Chief United States District Court Judge

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<sup>1</sup>

Indeed, even if the Court were to apply the *de novo* standard of review, it would accept the Report and Recommendation, grant summary judgment, and deny appointment of counsel.